

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1638 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? No

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?
No

A INFRASTRUCTURE LTD.

Versus

GODHARA MUNICIPALITY

Appearance:

M/S THAKKAR ASSOC. for Petitioner

MR HM PARIKH for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2, 3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 30/03/98

ORAL JUDGEMENT

Leave to delete respondent No. 3. Rule.
Learned counsel Mr HM Parikh waives service of Rule for
respondent Nos. 1 and 2.

2. This petition under Article 226 of the

Constitution challenges the decision of respondent No.1-

No. 2 as arbitrary, illegal, null and void.

3. The respondent - Municipality had issued a public notice inviting offers for the supply of AC Pressure Pipes. The petitioner, respondent No. 2 and other parties initially offered their bids at the rates which are mentioned in the following comparative table reproduced in para 2 of the petition about which there is no dispute :-

		SR		SIZE/		DEEPAK		KRISHNA	
		% DIFF.							
JJJJJJTURE		BETW		NO		CLASS IN		TRADERS	
NT		STRUCTURE		BETW		NO		CLASS IN	
CEMENT		STRUCTURE		BETW		NO		CLASS IN	
ADING		CEMENT		STRUCTURE		BETW		NO	
TRADING		CEMENT		STRUCTURE		BETW		NO	
CORPN.		TRADING		CEMENT		STRUCTURE		BETW	
RS		CORPN.		TRADING		CEMENT		STRUCTURE	
TRADERS		CORPN.		TRADING		CEMENT		STRUCTURE	
ASS IN		TRADERS		CORPN.		TRADING		CEMENT	
O		CLASS IN		TRADERS		CORPN.		TRADING	
NO		CLASS IN		TRADERS		CORPN.		TRADING	
E BETW		NO		CLASS IN		TRADERS		CORPN.	
STRUCTURE		BETW		NO		CLASS IN		TRADERS	
		MM (PIPE		GODHRA		A' BAD		ABAD	
LOWEST &									
		ONLY)							
IIND									
LOWEST									
		----		-----		-----		-----	
-		-----							

4. The respondent- Municipality addressed the letter dated 29.12.1997 (Annexure "B" to the petition) informing the petitioner that "your tender of supplying AC Pressure pipes to the Godhra Municipality has been sanctioned. You are, therefore, instructed to make necessary agreement with the Municipality and to deposit the required security deposit within seven days i.e. on or before 5.1.1998."

The petitioner accordingly supplied the Bank Guarantee dated 31.12.1997 (Annexure "D" to the petition) alongwith the petitioner's letter dated 3.1.1998 (Annexure "C" to the petition). However, the Municipality gave its reply dated 3.1.1998 to the petitioner's letter dated 3.1.1998 stating that the Municipality has decided to extend the date to make an agreement for the work of supplying AC Pressure pipes and that the respon

new date, whenever it is fixed. The petitioner was thereafter called for negotiations by the respondent Municipality and the petitioner agreed to reduce the rate by 1.5% as per its letter dated 23.1.1998. Thereafter, the respondent - Municipality invited respondent No. 2 for negotiating the rates and respondent No. 2 by his offer dated 27.1.1998 reduced its rates so as to give the following picture :-

Name of Agency	80 mm	150 mm	250 mm	400 mm	500 mm

Petitioner -					
A Infrastructure	87=40	174=00	386=00	846=00	1324=00
Limited					
(Tender Rate)					

Petitioner					
1.5% less Rate	85=70	171=39	380=21	833=31	1304=14

Narayan Fitting					
Company's rate	83=50	170=00	375=00	803=00	1275=00
as on 27.1.1998					
(Resp. No. 2)					

Narayan Fitting					
Company's Tender	110=00	215=00	515=00	1150=00	1428=00
(Resp. No. 2)					

Estimated Rate	104=50	201=00	519=00	1069=50	1513=50

By its notice dated 15.2.1998, the petitioner protested against such private negotiations.

Respondent No. 2 again agreed to reduce its rates and the respondent - Municipality thereafter entered into the contract with respondent No. 2 on 16.2.1998 finally at the following rates :-

	80 mm	180 mm	250 mm	400 mm	500 mm
	19 kg.	10 kg.	10 kg.	10 kg.	10 kg.
Rs.	75=15	153=00	337=00	722=70	1147=50

The respondent - Municipality also placed a work order with respondent No. 2 for the following items and quantities :-

Sr. No.	Item	Quantity	Rate	Total
1.	80 mm AC Pressure pipe 10 kg.	12000 Mtrs.	Rs.75-15 per mtr.	9,01,000
2.	150 mm AC Pressure pipe 10 kg	6000 Mtrs.	Rs.153-00 per mtr.	9,18,000
3.	250 mm AC Pressure pipe 19 kg.	2400 Mtrs.	Rs.337-50 per mtr.	8,10,480
4.	400 MM AC Pressure pipe 10 kg.	--	Rs.722-70 per mtr.	--
5.	500 mm AC Pressure pipe 10 kg.	--	Rs.1147-50 per mtr.	--

5. The grievance of the petitioner is that the petitioner had earlier approached this Court by filing Special Civil Application No. 1229 of 1998 and in view of the letter dated 29.12.1997 of the respondent-Municipality, this Court had directed the respondent Municipality to treat the petitioner's notice dated 15.2.1998 as a representation and to decide the same within a stipulated time limit. However, the respondent Municipality, instead of implementing the said order, has entered into a contract with respondent No. 2

as if the contract was entered into on 16.2.1998.

On merits, it is submitted that when the petitioner's rates were the lowest and respondent Municipality had already communicated its decision to enter into the agreement with the petitioner as per their letter dated 29.12.1997, if at all the respondent Municipality was desirous of entering into negotiations with the petitioner as well as respondent No. 2, it was not open to the Municipality to give an edge to respondent No. 2 by calling him last for the negotiations because the person who is last called for negotiations is bound to be in an advantageous position. It is submitted that respondent No. 2 could not have been last called for negotiations in absence of the said petitioner. In this connection, strong reliance is also placed on the decision of the Apex Court in the case of Ram and Shyam Co. vs. State of Haryana, AIR 1985 SC 1147.

Mr. Kavina, learned counsel for the petitioner states that the petitioner is prepared to offer rates which are lower than the rates at which the contract is given to respondent No. 2 and which are already quoted hereinabove.

6. An affidavit in reply has been filed on behalf of the Municipality. It is contended therein that on 4.1.1998 the Municipality came to know that the petitioner was blacklisted by the Rajkot Municipal Corporation as the petitioner had failed to supply the material against the order placed for Emergency Water Supplies Scheme on Rajkot Municipal Corporation and the said fact was intimated to the Gujarat Water Supply and Sewerage Board, Gandhinagar. Hence, on 6.2.1998, the respondent Municipality has informed the petitioner about the said intimation. It is further submitted that the petitioner had agreed to reduce the rates only by one and half per cent as per the last meeting held on 23rd January, 1998 whereas respondent No. 2 had revised his offer which was lower than the offer of the petitioner and accordingly the Municipality was to gain to the extent of Rs. 2,13,420-80. It is, therefore, submitted that the decision of the respondent Municipality was legal and valid and that it would not be open to this Court to sit in appeal over the decision of the Municipality while exercising the writ jurisdiction under Article 226 of the Constitution, since in the field of contract it is open to the respondent-Municipality to exercise its discretion for selecting the party to which the contract may be awarded by the respondent

Municipality.

7. Having heard the learned counsel for the parties, it appears to the Court that while the respondent-Municipality could have called the parties for negotiations, in calling the parties one after another instead of calling them simultaneously, the respondent-Municipality gave a preferential treatment to respondent No. 2 by giving respondent No. 2 the last opportunity to quote its rates which are bound to be lower than the rates quoted by the petitioner. In view of the decision of the Apex Court in the case of Ram and Shyam Co. (Supra), such a procedure by calling one party for negotiations in absence of the other must be held to be illegal and arbitrary and, therefore, in violation of the petitioner's fundamental right under Article 14 of the Constitution.

8. It is true that the reply affidavit on behalf of the respondent - Municipality states that the petitioner was blacklisted by the Rajkot Municipal Corporation. However, it is pertinent to note that even after writing letter dated 6.1.1998 to the petitioner, the respondent Municipality indicated in the same letter that after receiving clarification, the Municipality shall plan to visit the petitioner's factory and will have a meeting with their Managing Director and/or Chairman. The notings on the file of the Municipality which are produced for perusal of the Court do not show that the respondent - Municipality took the impugned decision to award the contract in favour of respondent No. 2 on the ground that the petitioner was blacklisted by the Rajkot Municipal Corporation. The only ground mentioned is that the prices offered by respondent No. 2 were lower than those offered by the petitioner and, therefore, respondent would stand to gain to the extent of Rs. 2,13,420-80. In view of the fact that the respondent itself has not taken the aforesaid factor into consideration while taking the impugned decision, it would be just and proper to direct the respondent Municipality to call the parties who had offered their tenders pursuant to the public notice for fresh negotiations and until a fresh decision is taken pursuant to such negotiations, the contract entered into between the respondent - Municipality and respondent No. 2 will have to be kept in abeyance. During the course of negotiations between the parties, if ultimately respondent No. 2 decides to award the contract in favour of respondent No. 2, the same will have to be done on the basis of the rates which are finalized at the fresh negotiations. In case the respondent-Municipality

decides to award the contract to any other party, the contract dated 16.2.1998 between the respondent-Municipality and respondent No. 2 will have to be treated as having been cancelled by the respondent Municipality. However, these directions are required to qualified in as much as the respondent-Municipality has already placed the work order with respondent No. 2 at the contract rate wide letter dated 16.2.1998 for the quantities mentioned therein. The respondent -Municipality will, therefore, be at liberty to supply the said quantities and the respondent-Municipality will be at liberty to accept the said quantities at the rates mentioned in the contract dated 16.2.1998. Subject to the aforesaid modification as regards the supply of the quantities mentioned in the order dated 16.2.1998, the contract dated 16.2.1998 between the respondent-Municipality and respondent No. 2 shall be kept in abeyance.

9. Mr Parikh further submits that in order to avoid any further difficulties or complications, the respondent - Municipality shall call all the parties for negotiations on 6.4.1998 except the party/parties which have already withdrawn the Earnest Money Deposit.

10. The petition is accordingly allowed in terms of the aforesaid directions. Rule is made absolute to the aforesaid extent with no order as to costs.

Sd/-

March 30, 1998 (M.S. Shah, J.)